

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the January 6, 2011 Notice of Non-compliant Amendment, and favorable consideration of the October 20, 2010 Request for Reconsideration are respectfully requested in view of the following remarks.

The Notice states that the October 20, 2010 Request was non-compliant for failing to address the provisional double patenting rejections.

However, the October 20, 2010 Request at the third paragraph from the bottom of page 2 states:

Each of the anticipation, obviousness **and double-patenting rejections** relies at least in part on a publication that is not properly citable as prior art against the pending claims. [Emphasis added.]

The Request at page 3 then requests withdrawal of "all outstanding rejections." Thus, the Request addressed all outstanding issues and was fully compliant.

To the extent that the Examiner continues to disagree, Applicants hereby request withdrawal of all the double patenting rejections because each relies on a combination of references including Appl. Phys. A, 2004, 79: 1617-1624 (Kruse et al.), and therefore each of the double patenting rejections is rendered moot by Applicants' earlier submission of evidence showing that the Kruse et al. reference is not properly citable as prior art.

Applicants also note that the double-patenting rejection over Application No. 10/561,628 was rendered moot by the abandonment of said application.

For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested. Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,
CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

January 6, 2011

By /david m tener/
David M. Tener
Registration No. 37,054
Customer No. 03000
(215) 567-2010
Attorneys for Applicants

Please charge or credit our
Account No. 03-0075 as necessary
to effect entry and/or ensure
consideration of this submission.